IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED : 25.06.2007

CORAM

THE HONOURABLE MR. JUSTICE S.MANIKUMAR

W.P.No.19689 of 2007
&
M.P.Nos.1 and 2 of 2007

Tvl.Shree Knit Wear
Indira Nagar, Dharapuram Road,
Tirupur . . Petitioner

Vs

The Commercial Tax Officer,
Tirupur (Rural),
Tirupur. Respondent

Petition filed under Article 226 of the Constitution of India praying to issue a writ of certiorarified mandamus to call for the records of the respondent herein in CST No.658960/1996-97 on his files, quash the order dated 31.03.2003 passed therein, and further direct him to decide the issue relating to the claim of exemption on pre-export sales in light of the law laid down by the Division Bench of this Court in Writ Appeal No.458 of 1997 reported in 2003-2004 TNCTJ 213.

For Petitioner : Mr.P.V.Sudhakar for
Mr.K.J.Chandran

For Respondent : Mr.R.Mahadevan
Additional Government Pleader

O R D E R

Petitioner has sought for a Certiorarified Mandamus to quash the order of assessment dated 31.03.2003 and for further direction to decide the issue relating to the claim of exemption on pre-export sales in light of the law laid down by the Division Bench of this Court in Writ Appeal No.458 of 1997 reported in 2003-2004(9) TNCTJ 213 (THE TIRUPPUR EXPORTERS ASSOCIATION vs. STATE OF TAMIL NADU) and for further orders.

2. According to the petitioner, he is a manufacturer of hosiery garments and he is an assessee on the file of the respondent herein. In respect of the assessment year 1996-1997, the petitioner claimed exemption on the turnover relating to pre-export sales of hosiery garments. In support of the claim of exemption, the petitioner has filed Bills of Lading, proof of export and Form H declarations. However, the claim of exemption was disallowed on the only ground that the petitioner has failed to file the copies of the purchase orders of the foreign customers on the Export House and therefore tax at 10% and penalty under Section 12(3)(b) of the Tamil Nadu General Tax Act (hereinafter referred as the Act) were levied. Besides raising the grounds on the merits of the case, the petitioner contended that the authority has no jurisdiction to levy penalty as per Section 12(3)(b) of the Act. The petitioner has further contended that the respondent has failed to consider that the Form H declarations which the petitioner has already filed to prove the exemption for pre-export sales.

3. Learned counsel for the petitioner submitted that if the respondent had come to a preconceived notion that the petitioner should have produced purchase order/export agreement of the foreign buyer, he must have informed the petitioner so as to enable him to file an application to summon the documents from the Export House concerned or from the assessing officer who has jurisdiction over the Export House and such course of action was not followed in this case.

4. Learned counsel for the petitioner further submitted that the petitioner had stopped his business activity from 09.01.1998 and though this fact was also intimated to the respondent. The assessing officer without giving opportunity to the petitioner has passed the assessment order and the assessment order was not served on the petitioner and therefore it amounts to violation of principle of natural justice.

5. Learned Additional Government Pleader appearing for the State on instructions submitted that the pre- assessment notice for the assessment year 1996-1997 sent on 03.06.2002, by registered post, was returned with postal endorsement "No Such person". Thereafter, the assessing officer has proceeded to pass orders dated 31.03.2003 on merits and the order was affixed in the registered address of the assessee on 20.06.2003. Therefore, he submitted that the order of assessment has been duly served on the petitioner and the assessee has to avail only the alternative remedy of appeal. On merits of the case, he submitted that since the petitioner had failed to produce the necessary documents to prove exemption, the assessment order is valid in law and does not need any interference.

6. Service of notice under the TNGST Act is contemplated under Rule 52, which reads as follows;

> "52(1) Service of notices- The service on a dealer of any notice, summons or order under the Act or these rules may be effected in any of the following ways, namely:-
>
> (a)by giving or tendering it to such dealer or his manager or agent or the legal practitioner appointed to represent him or to his authorised representative.
>
> (b)if such dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, by giving or tendering it to any adult member of his family;
>
> (c)if the address of such dealer is known to the assessing authority, by sending it to him by registered post; or
>
> (d)if none of the modes aforesaid is practicable, by affixing it in some conspicuous place at his last known place of business or residence.

As per Rule 52 of the TNGST Act, if the dealer or his manager or agent or the legal practitioner appointed to represent him, or his authorised representative is not found, it is open to the assessing officer to serve the copy of the notice by giving or tendering it to any adult member of his family. Notice or service of order can also be effected by sending the same by registered post, if the address of the dealer is known to the assessing officer. But in the instant case, assessment notice has been sent by registered post to the place of business, which was already closed. Sending the notice or the order of assessment to the place of business which is already closed does not serve the purpose of the Section and it is nothing but an empty formality. Normally when a dealer registers as an assessee under the Act, the registered place of business and the residential address are furnished in the application form itself. The notice or order could have been sent to the place of residence by registered post or tendered to any adult member of the family, considering the fact that the closure of the business at the registered address of the petitioner was already informed to the department.

7. Clause (b) and (c) of Section 52, clearly mandates the assessing authority to send the notice/order to the residence of the assessee when the address is known. In the instant case, even the assessment order has been served only by affixture in the registered office of the assessee. Affixture can only be done, only if the prescribed modes as per clause(a) to (c) of the above mentioned Rule of TNGST Act is not feasible of compliance. Affixture can be done by affixing the notice or order in some conspicuous place at his last known place of business or residence as contemplated under clause (d) of Section 51 of the Act. It is apparent that affixture has been done without following the procedure contemplated under Clause (a) to (c) of the Rules and such procedure is not permissible in law. The petitioner has not been given adequate opportunity to submit

his objections and therefore, the consequential order of assessment is violative of principle of natural justice. Therefore, the impugned assessment order dated 31.03.2003 is quashed and the writ petition is allowed. However, the respondent would serve pre assessment notice to one P.Mayilsami, one of the partners of the assessee, residing at Kovilpalayam, Avinashipalayam Post, Tirupur Taluk, within a period of two weeks from the date of receipt of a copy of this order giving him sufficient time for filing his objection on behalf of the assessee. On receipt of such objections, the respondent shall pass appropriate orders on merits and in accordance with law. Consequentially, connected miscellaneous petitions are closed.

jikr

Sd/-
Asst.Registrar

/true copy/

Sub Asst.Registrar

To,

The Commercial Tax
Tirupur (Rural)

+1 cc to Special Government Pleader Sr.no.37351.

+1 cc to M/s.K.J.Chandran, Advocate Sr.No.37451.

AKR(CO)
dcp/29.8

W.P.No.19689 of 2007